



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

REPLY TO
ATTENTION OF

May 20, 2010

Regulatory Division

Action ID: SAW-2010-00020

SUBJECT: Milburnie Dam Stream Restoration Bank, Initial Evaluation Letter Pursuant to 33 CFR Part 332.8 (d)(5)

Mr. Randy Turner
Restoration Systems, LLC
1101 Haynes Street
Raleigh, North Carolina 27604-1499

Dear Mr. Turner:

This correspondence is in reference to the prospectus you submitted for the Milburnie Dam Stream Restoration Bank (MDSRB) in which you have proposed to remove the Milburnie Dam from the Neuse River (HUC 03020201). The dam site is located at the Twiggs Property, adjacent to 1103 Old Milburnie Road, in the City of Raleigh (PIN#s 1734662494 and 1734668451), in Wake County, North Carolina. This correspondence also confirms my telephone call on May 20, 2010.

While your prospectus provided the minimum information required to consider it a complete submission, we have determined that your prospectus, as presented, does not contain enough detailed information to consider your proposal as adequate to determine if the MDSRB has potential to provide compensatory mitigation for Department of Army permits within the USGS cataloging unit 03020201. As a minimally complete prospectus, your proposal was put out on public notice within 30 days of receipt, as required by our regulations, we have reviewed the comments of the Interagency Review Team (IRT) and public that were received during the 30-day comment period, which were provided to you within 15 days of the end of the comment period. After review of these comments, we have determined, in accordance with 33 CFR 332.8 that the potential adverse impacts associated with the removal of the dam, as enumerated below, may outweigh the potential to generate compensatory mitigation credits. While we understand that it was your intention to provide much of the following information within your subsequent mitigation plan, we believe it would be premature of us to approve your prospectus until the following issues are resolved.

The action items and information required to determine whether the MDSRB has potential to provide compensatory mitigation for Department of Army permits are detailed as follows:

1. The boundary of the impoundment is defined in the Dam Removal Guidance (DRG) as the “elevation of dam crest or spillway, whichever is less”. In previous correspondence you have indicated the spillway elevation is 173.31’ MSL but your proposed top of impoundment during our canoe reconnaissance may have been 174.88’. The IRT will have to concur with your interpretation of the top of impoundment, as opposed to the definition in the DRG.
2. The extent of potential wetland drainage/removal as a result of significant lowering of the water level of the river, as described by the existing and expected elevations at median daily flow, needs to be determined. A separate mitigation plan may be required to compensate for any loss of wetlands.
3. The amount of sediment to be released by removal of the dam, and disposition of these sediments, which may be toxic, must be evaluated (considering the upstream proximity of the many registered wastewater treatment plants and industrial facilities indicated in the Tier I Study documented to have released toxic substances). You have indicated that the Fish and Wildlife Service may be available to assist you in a Tier 2 study of sediment toxicity. An explanation of methodology and delineation of sampling locations is required once the extent of the impoundment is established. The amount and chemistry of the sediment that has accumulated during the last 100+ years, and may be resuspended by dam removal, will be critical in determining the feasibility of the MDSRB.
4. The potential for adverse impacts from your proposal on historic properties potentially eligible for inclusion on the National Registry of Historic Places needs to be documented. A mitigation plan may be required as determined through coordination with the North Carolina State Historic Preservation Office.
5. It is not clear whether your proposal will improve or impair water quality. Considering the average depth of the impoundment is estimated to be approximately 4 feet, please provide evidence that thermal stratification and/or hypoxia/anoxia exist in this reach of the river/impoundment, as described in your prospectus.

6. It is not clear that your proposal will significantly modify aquatic species composition in the effected reach considering that “natural” river flows are not possible based on the Corps’ controlled releases that will continue from Falls Lake ~15 river miles upstream. Please provide details of your estimated “appropriate” species shift in this reach of the river/impoundment.
7. It is not clear that your proposal will significantly benefit protected aquatic species in the effected reach. Please provide details of specific protected species and rational as to why they may benefit from the removal of this dam.

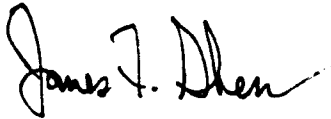
As we have discussed, it is likely that your proposal will require an Individual Permit (IP), if it is determined that the project will result in a discharge of fill material within jurisdictional waters. We are unable, at this time, to make a determination your proposal will not result in more than a minimal effect on the aquatic environment and thus be eligible for nationwide permit authorization. Also, the high volume of public comments generated by the Public Notice indicates that a thorough public interest review is warranted for the MDSRB proposal. We will continue to forward all public comments to you in a timely fashion. You may receive several duplicates, as we have, but we want to ensure you have received them all. Until you provide the information as described above, we are unable to proceed with the review of your proposal. We can discuss the feasibility of a concurrent Public Notice for the revised prospectus and IP as you have stressed the time sensitivity of your proposal. As a first step we would suggest you provide a plan view of the expected cleared and/or graded areas, in the vicinity of the dam, and an estimate of the square footage of expected fill within jurisdictional areas.

Finally, it appears that a fundamental goal of this project is to restore anadromous fish to the Neuse River above the existing dam. In the event the adverse impacts associated with removal of the dam outweigh the expected benefits, we suggest you investigate options to allow fish passage that do not involve removal of the dam.

Additional information may be found on the Regulatory Division website at:
<http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html>.

Thank you for your attention and cooperation. Please contact me at the Raleigh Regulatory Field Office, telephone (919) 554-4884 extension 31, should you have any questions or comments regarding this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "James F. Shern". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

James F. Shern
Regulatory Specialist
Raleigh Field Office

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